



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-20/58398

PRELIMINARY RECITALS

Pursuant to a petition filed June 5, 2003, under Wis. Stat. §49.45(5), to review a decision by the Fond du Lac County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on July 24, 2003, at Fond du Lac, Wisconsin. The record was held open five days for submission of additional information; the information was received on July 29, 2003.

The issue for determination is whether petitioner's wife's income allocation may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Debra Gohlke, ESS
Fond du Lac County Dept. Of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Fond du Lac County. He is in a nursing home; his wife (petitioner's spouse) resides in the community.
2. Petitioner applied for MA in May, 2003. He was found to be eligible for MA under Spousal Impoverishment rules, with his first cost of care being required June 1, 2003.
3. The county set the community spouse income allocation at the maximum amount of \$2,266.50. Petitioner also was allowed a \$505 allowance for the couple's child.

4. Petitioner's gross monthly income was \$3,001.44 from a combination of sick, sabbatical, and vacation hours from the State of Wisconsin. (petitioner's spouse) monthly income is \$1,600 per month earned income.
5. Petitioner's monthly income deductions for taxes, insurance, and union dues total \$1,055.36. (petitioner's spouse) monthly deductions total \$294.66.
6. (petitioner's spouse) monthly expenses for her car, groceries, day care, and charge cards total \$1,316. I note that although (petitioner's spouse) wrote \$400 for the charge card payments, I counted only the minimum payments due (\$45 for one card, \$41 for the other) in that total. She also pays \$1,239 for her home mortgage, real estate tax and insurance, and utilities.
7. (petitioner's spouse) requested an increase in the community spouse income allocation to be effective July 1, 2003.
8. At some point soon petitioner's income will be shifted from vacation/sick pay to income continuation insurance. Monthly income will decrease to \$2,614, with tax deductions reduced to approximately \$450 per month. Taxes are not deducted at as high a rate from income continuation insurance payments because approximately one-half of the payments are not counted as taxable income.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the income considered necessary to maintain the community spouse in the community. The current maximum level is set at \$2,266.50 if housing costs exceed \$606. MA Handbook, Appendix 23.6.0 (4-1-03).

A fair hearing officer can grant an exception to this limit on community spouse income. The hearing officer may increase the income allowance following a fair hearing. The hearing officer does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus a hearing officer may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

In this case I find that petitioner's wife's necessary expenses amount to \$3,905 for the month of July, 2003. This is an unusual case in that petitioner is still receiving earned income that includes deductions for taxes, insurance, and union dues. Petitioner's wife also is employed and has payroll deductions that an elderly

community spouse does not have. They have child care expenses and a full mortgage payment. Donna's listed monthly expenses for groceries, car, and utilities are not inflated.

I will increase (petitioner's spouse) community spouse income allocation to \$3,400 (\$3,905 minus the \$505 dependent care allowance) effective July 1, 2003.

Soon petitioner's vacation and sick leave hours will be used, and then the income continuation insurance will start. Since it is already evident what the income and deductions will be, I will make the income allocation for that period as well.

Monthly expenses will decrease from \$3,905 to \$3,300. That is because petitioner's income deductions will be reduced from \$1,105 to \$450, a reduction of \$605. Thus, beginning the first month after petitioner's income is decreased due to the change from regular income to income continuation, petitioner's community spouse income allocation will be reduced to \$2,795 (\$3,300 minus the \$505 dependent allowance).

CONCLUSIONS OF LAW

Petitioner's wife's monthly income allocation may be increased due to circumstances that could result in financial duress.

NOW, THEREFORE, it is ORDERED

That the matter is remanded to the county with instructions to increase the community spouse income allowance to \$3,400 per month, effective July 1, 2003. The county additionally shall decrease the allowance to \$2,795 effective the first month after petitioner's income is reduced due to the shift from regular income to income continuation insurance.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 8th day of
August, 2003

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0805/bcs